

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM DAVENPORT,

Plaintiff,

v.

KELLY CUNNINGHAM, DAROLD  
WEEKS, CATHY HARRIS, PA  
RANDALL GRIFFITH, BARBARA  
BOARDMAN, LINDA BRYANT,  
WILLIAM STODARD, HENRY  
RICHARDS, and UNIDENTIFIED  
MEDICAL DISPENSING NURSES,

Defendants.

NO. C10-5583 BHS/KLS

ORDER DENYING MOTION FOR  
THE APPOINTMENT OF COUNSEL

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the court is Plaintiff's motion for the appointment of counsel. ECF No. 16. Having carefully reviewed Plaintiff's motion, and balance of the record, the court finds, for the reasons stated below, that Plaintiff's motion should be denied.

**DISCUSSION**

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*

1 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is  
2 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may  
3 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
4 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
5 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional  
6 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]  
7 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal  
8 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
9 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show  
10 he has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
11 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
12 1101, 1103 (9<sup>th</sup> Cir. 2004).

13  
14  
15 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
16 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the  
17 issues involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development  
18 of further facts during litigation. But, if all that was required to establish the complexity of the  
19 relevant issues was a demonstration of the need for development of further facts, then  
20 practically all cases would involve complex legal issues. *Id.*

21  
22 Plaintiff maintains that he should be appointed counsel because he has limited  
23 knowledge of the law, has mental and personality disorders and suffers from medical issues,  
24 including Bell’s Paulsey and arthritis. In support, he attaches an excerpt from “SCC Annual  
25  
26

1 Review” dated “12.05.05.” *Id.*, pp. 2, 3. However, there is no indication that these conditions  
2 affect Plaintiff’s ability to articulate his claims *pro se*.

3 Plaintiff’s lack of legal skills is also not an exceptional circumstances to warrant the  
4 appointment of counsel. There is nothing in the motion for counsel presented to the court to  
5 indicate that a finding of exceptional circumstances is warranted in this case. While Plaintiff  
6 may not have vast resources or legal training, he meets the threshold for a *pro se* litigant.  
7 Concerns regarding investigation and discovery, an absence of legal training and limited access  
8 to legal materials are not exceptional factors, but are the type of difficulties encountered by  
9 many *pro se* litigants. There are also numerous avenues of discovery available to the parties  
10 through the Federal Rules of Civil Procedure during the litigation process.  
11

12 Plaintiff filed his complaint *pro se* and he has demonstrated an adequate ability to  
13 articulate his claims *pro se*. Plaintiff has not demonstrated that the issues involved in this case  
14 are complex or that he has had any difficulties in expressing them. In his complaint, Mr.  
15 Davenport claims that he has been denied proper medical care at the SCC. These are not  
16 complex issues. Plaintiff has also not shown a likelihood of success on the merits other than  
17 his conclusory statements, such as “there has been an inordinate amount of resident’s die here  
18 at the SCC;” complaints, made by resident’s, against medical here are numerous.”  
19

20 Accordingly, Plaintiff’s motion to appoint counsel (ECF No. 16) is **DENIED**. The  
21 Clerk is directed to send copies of this Order to Plaintiff.  
22

23 DATED this 13th day of October, 2010.

24   
25 Karen L. Strombom  
26 United States Magistrate Judge